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No. 6

In the Supreme Court of the United States

OCTOBER TERM, 1931

DE LAVAL STEAM TURBINE COMPANY, PETITIONER

v.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether a manufacturing company which had entered into three contracts with various parties to construct marine steam turbines and kindred equipment (two of which were entered into after March 4, 1917, and the other after June 15, 1917) is entitled as a part of the just compensation for the requisition of those contracts by the Government or for subsequent cancellation of the contracts by the Government to any allowance on account of the anticipated profits which it would have made if the contracts had been fully performed.

STATUTES INVOLVED

The statutes involved are set out in Appendix A, *infra*, pp. 26–28.

STATEMENT

The petitioner, a manufacturer of marine steam turbines, contracted on March 15, 1917, to manufacture certain products for the Turbine Equipment Company. (R. 81–82, 52.) On May 18, 1917, the petitioner made a similar contract with Supple & Balljn. (R. 81–82, 27.) On December 31, 1917, it made a similar contract with G. M. Standifer Corporation. (R. 81–82, 39.) In the early part of the year 1918 the Fleet Corporation, acting for the President, requisitioned, together with ten other contracts, the contracts of these three purchasers and ordered the petitioner to deliver to the Fleet Corporation the products called for by the con-

tracts. (R. 82.) In April, 1918, the Fleet Corporation contracted directly with the petitioner for the purchase of certain spare parts for turbine equipment; as subsequently modified, this fourth contract was referred to as P. D. 1779. (R. 82, 83.) From time to time these contracts were modified, and they were finally cancelled by the Fleet Corporation after the Armistice. (R. 83, 84.)

An award of just compensation was made by the Fleet Corporation which the petitioner considered insufficient. Seventy-five per cent of this award was paid the petitioner on August 17, 1920 (R. 83), and it brought this suit in the Court of Claims to have the correct amount of compensation determined.

The Court of Claims held that no anticipated profits on any of the contracts should be included in the award (R. 94.) It computed compensation as follows: The excess of the petitioner's actual costs and expenditures over the cash payments received on the contracts totaled $116,231.66. (R. 88, 89.) To this sum the court added $30,000 damages for extraordinary expense due to stoppage of work (R. 98, 95), and $15,000 for rental value of and expenses incident to space used for storing materials after the work was stopped. (R. 98, 84.) From this total it subtracted the agreed salvage value of the materials on hand and ordered by the manufacturer for use in ~~purchasing~~ performing the contracts, $20,149.88 (R. 98, 85), and the

seventy-five per cent award of compensation already paid, $66,542.72 (R. 83). After adjusting allowances on the basis of interest (R. 97, 98), the award amounted to $84,074.34, with interest from August 17, 1920 (R. 89, 98). To this the court added the sum of $8,500, the value of the contracts at the date of the cancellation, with interest from March 17, 1919, the average date of cancellation. (R. 94, 97.) These figures are set forth in more detail in Appendix C, *infra*, p. 31.

At the time of the requisition of the contracts, the petitioner had provided itself with the materials, equipment, and labor to perform the contracts and was ready, able and willing to complete performance. (R. 82.) At the time of the cancellation of the contracts, the petitioner could have completed them at a cost which would have yielded it a net profit of $370,663.81 [1] if it had received the full contract price. (R. 85–86.) There is no finding as to the financial condition of the parties with whom the petitioner originally made the contracts.

SUMMARY OF ARGUMENT

I

The Court of Claims correctly refused to include anticipated profits in the award of just compensation for the cancellation of the contract, P. D.

[1] On the Supple and Ballin contract (R. 85) $37,959.16
On the Luckenbach Turbine Equipment Company contract (R. 86) 13,939.15
On the Standifer contract (R. 85) 318,765.50
370,663.81

1779, made between the Fleet Corporation and the petitioner in April, 1918. There is no assignment of error to the decision of the court on this point. Even if this question were before this Court, it would be concluded by the authority of *Russell Motor Car Co. v. United States*, 261 U. S. 514.

II

The petitioner suffered no loss because of the requisition of its contractual rights under the contracts which it had made with third parties. By that requisition the Fleet Corporation was substituted on the contracts for the original purchasers. The petitioner no longer could look to the private contractors for performance. Its rights were against the United States, a party at least as responsible financially as the original purchasers. Several of the contracts which were requisitioned were completely performed. Cancellation, not requisition, of those not completely performed caused the loss to the petitioner for which it is entitled to just compensation.

III

The Court of Claims correctly refused to include anticipated profits in the award of just compensation, for the cancellation of the three contracts originally made between the petitioner and private parties.

A. The Standifer contract was executed in December, 1917, some months after the passage of the

Act of June 15, 1917. Private parties were bound to know that under that statute the Government could modify, suspend, or requisition any contract for the production of war material. In fact, the petitioner was well aware of this statute, and was in the fall of 1917 manufacturing war materials only as permitted by the War Industries Board. Under the rule of the *Russell Motor Car Co.* case this statutory provision became a part of the Standifer contract, and upon its cancellation no anticipated profits were due to the petitioner.

B. The other two private contracts were executed prior to June 15, 1917, but after the enactment of the Act of March 4, 1917. The provisions of this statute, similar in effect to those of the Act of June 15, 1917, became a part of these two contracts. The rule of the *Russell Motor Car Co.* case therefore is applicable and excludes anticipated profits from just compensation for the cancellation of these contracts.

IV

In any event the petitioner is not entitled to anticipated profits as compensation for the cancellation of its contracts, but only to the value of the contracts at the date of the cancellation, and this sum was allowed by the Court of Claims. The statute, under which the duty to pay arose, obligates the Government to make "just compensation." This technical phrase, "just compensa-

tion," has been interpreted to include the value of the contracts at the date of cancellation and to exclude anticipated profits. The court below found as a fact that the value of the contracts at the date of cancellation was $8,500.00. This amount was included in the award of compensation.

The petitioner confuses just compensation for the requisition of property, the measure of damages for breach of contract, and just compensation for the cancellation of contracts. The first includes no costs and expenses of the former owner. Damages for breach of contract include anticipated profits. This claim is one for compensation for a lawful cancellation. Many of the authorities relied on by the petitioner are breach of contract cases. None are in conflict with the decision below.

ARGUMENT

The petitioner's brief on the merits contains no assignment of error as required by paragraph 2 (e) of Rule 27 of this Court. The petition for certiorari contains a heading "Reasons for Granting the Writ and Specification of Errors" (R. 4), but it is difficult to tell from the material following this heading just exactly what the petitioner relies upon. We do not waive this failure of the petitioner to comply with the rules, but we endeavor to answer the contentions which the petitioner has advanced in its brief.

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I

ANTICIPATED PROFITS WERE PROPERLY DENIED AS JUST COMPENSATION FOR THE CANCELLATION OF THE CONTRACT MADE BETWEEN THE FLEET CORPORATION AND THE PETITIONER, KNOWN AS P. D. 1779

One of the contracts for the cancellation of which the petitioner sought recovery in the Court of Claims was entered into directly between the Fleet Corporation and the petitioner in April, 1918. This is the contract known as P. D. 1779. (R. 82, 83.) Although the petitioner refers to this contract in its brief on the merits (pp. 4, 6, 15), no mention whatever is made of it in the "Reasons for Granting the Writ and Specification of Errors" included in the petition for certiorari. Even if the petitioner were in a position to attack the decision of the court below with respect to this contract, we submit that the decision is plainly correct.

This contract was made after the passage of the Act of June 15, 1917, *infra*, pp. 27–28, directly between the Government and the petitioner. It is established by *Russell Motor Car Co.* v. *United States*, 261 U. S. 514, that anticipated profits are no part of the just compensation due from the United States for the cancellation of such a contract. We believe that the decision of the court below, so far as it relates to this contract P. D. 1779, was required by the decision of this Court in the *Russell Motor Car Co.* case and is plainly correct.

II

THE REQUISITION OF THE PETITIONER'S CONTRACTUAL RIGHTS UNDER THE THREE CONTRACTS WHICH IT HAD MADE WITH THIRD PARTIES CAUSED IT NO LOSS

The petitioner contends that the *requisition* of the purchaser's rights under the three contracts which it had made with private parties caused it an injury for which it is entitled to receive just compensation. In support of its position the petitioner advances the decision of this Court in *Brooks-Scanlon Corp.* v. *United States,* 265 U. S. 106.

But the petitioner's position here is not analogous to that involved in the *Brooks-Scanlon* case. There the claimant was the purchaser of the products which were requisitioned. Here the petitioner is the manufacturer of the products; it is in the position of the shipbuilder in the *Brooks-Scanlon* case, as to whom this Court said (p. 121):

> The builder was not entitled to more, because the Fleet Corporation took over the contract and succeeded to the rights of claimant.

In the contracts involved in the instant case the petitioner was under obligation to manufacture and deliver the turbines and had the correlative right to receive the purchase price. So far as the petitioner was concerned, the Government's requisition alone did not in any way injuriously affect it. The Fleet Corporation simply stepped into the shoes of the original purchasers, taking over and assuming and keeping alive for its own benefits their contracts.

The petitioner thereafter had the right to look to the United States for payment. It is true that the petitioner was deprived of the rights which it formerly had had against the private contractors. But in the place of these rights was substituted the obligation of the United States. It is evident that so far as the requisition alone is concerned, its effect was to give the petitioner greater security and to make more certain the probability that it would receive the payments due under the contracts. We submit that in this there was no injury to the petitioner.

There was no relation of cause and effect between the requisition of the purchasers' contractual rights and the petitioner's failure to realize the profits anticipated on the contracts here involved.[1] It was the cancellation of the contracts rather than the Government's requisition which was the cause of the petitioner's failure to realize such profits as might have accrued upon performance.

As a result of the requisitions, the petitioner lost its right to look to the original purchasers for performance. But the value of this right at the date of the requisition was almost negligible. Not only is there nothing in the findings concerning the financial responsibility of the three parties with whom the petitioner had made the contracts, but the Government was in complete control of all metals and

[1] For example, ten of the thirteen contracts which were requisitioned were completely performed by the petitioner for the Government.

other materials, fuel, power, and other necessaries without which the petitioner's manufacturer could not have proceeded. The Government was vested with the power to determine the allocation to manufacturers of such materials and necessaries or to deny them totally to any one manufacturer or group of manufacturers. The Government prescribed what work should be performed by a manufacturer, and embargoes were frequently issued on the manufacture and delivery of very many types and classes of products essential to the conduct of the war. This control was affected both by orders relating to precedence and by embargoes on unauthorized production.[1] It is plain that the Government might have frustrated the petitioner's performance of its contracts without having incurred any liability. *Omnia Commercial Co.* v. *United States*, 261 U. S. 502.

The petitioner also relies on *Monongahela Navigation Company* v. *United States*, 148 U. S. 312, *Duckett & Co.* v. *United States*, 266 U. S. 149, and *International Paper Co.* v. *United States*, 282 U. S. 399. But in each of these cases the requisition of the third party's property resulted directly in the loss of property to the plaintiff. The requisition constituted a direct appropriation of the whole property, including the lesser estate of the claimant. But in the instant case no property of the peti-

[1] See "American Industry in the War," a report of the War Industries Board, by its Chairman, Bernard M. Baruch, p. 282.

CITATIONS

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Statutes and Proclamation:

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Act of June 15, 1917, c. 29, 40 Stat. 182, 183 ..... 13, 27–28

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Miscellaneous:

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OPINIONS BELOW

The opinions of the Court of Claims (R. 89, 98) are reported in 70 C. Cls. 51.

JURISDICTION

The judgment of the Court of Claims was entered April 30, 1930. (R. 79.) A motion for new trial was overruled on November 3, 1930. (R. 81.) The petition for a writ of certiorari was filed January 29, 1931, and the writ was granted April 20, 1931. (R. 105, 107.) The jurisdiction of this Court rests on Section 3 (b) of the Act of February 13, 1925.

tioner was taken, its rights against the purchasers were frustrated and in their place were substituted rights against the United States. After the substitution of the Government for the purchasers in the petitioner's contracts, it had been deprived of nothing and the contracts were still in force, with the Government bound in place of the original contractors.[4]

III

ANTICIPATED PROFITS WERE PROPERLY DENIED AS A PART OF JUST COMPENSATION FOR THE CANCELLATION OF THE THREE CONTRACTS WHICH HAD ORIGINALLY BEEN MADE BETWEEN THE PETITIONER AND PRIVATE PARTIES.

Were this a suit for a breach of contract, the petitioner would be seeking as damages his expenses plus his anticipated profits. But this action is not for breach of contract; it is one for just compensation under the Act of June 15, 1917, because of the cancellation of certain contracts as authorized by that Act. The nonperformance resulted from a lawful act rather than from a breach of contract. We submit that the just compensation to which the petitioner is entitled should include its expenses and the value of its contractual rights at the date of cancellation, but nothing more.

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[4] Upon the requisition of the contracts by the United States the original purchasers whose rights were expropriated became entitled to just compensation for the taking, but the matter of settlement between the Government and the purchasers is not involved in this case.

The Act of June 15, 1917 (*infra*, pp. 27–28), authorized and empowered the President—

> (b) To * * * cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material.

And it was further provided that—

> Whenever the United States shall cancel, modify, suspend, or requisition any contract * * * it shall make just compensation therefor * * *.

A. Anticipated profits were properly denied for the cancellation of the Standifer contract entered into December 31, 1917

In *Russell Motor Car Co.* v. *United States*, 261 U. S. 514, this Court held that anticipated profits should not be included in awarding just compensation for the cancellation of a contract made between the Government and the claimant in May, 1918. We believe that this decision governs the award on the Standifer contract which was executed in December, 1917, although the United States was not a party to that contract when it was executed.

The ground upon which the *Russell* case was decided was that the provisions of the Act of June 15, 1917, allowing the United States to cancel or requisition any existing or future contracts, must be taken to have been in the minds of the parties and should be read into any contract which they made. But there is no reason why this ground should be confined to contracts made with the

United States. A person is bound to know the law as much when he contracts with a private party as when he contracts with the Government. It is plain that the Act of June 15, 1917, relates to private contracts as well as to Government contracts, for the word "requisition" in the statute can refer only to private contracts. That this interpretation of the statute is correct is indicated by the language of this Court in the *Russell Motor Car Co.* case, where it said (p. 519):

> It must be apparent, we think, that the words of the provision, "*any* existing or future contract," read with literal exactness, include all contracts, whether private or governmental.

The contract between the petitioner and the G. M. Standifer Corporation was executed on December 31, 1917. At that time the Act of June 15, 1917, was law, and knowledge of it was available to both parties; and, furthermore, they were bound by the statute whether they knew of it or not. In the *Russell Motor Car Co.* case this Court stated (p. 524):

> The contract, we must assume, was entered into with the prospect of its cancellation in view, since the statute was binding and must be read into the contract.

Although the present case does not come precisely within the facts of the *Russell Motor Car Co.* case, since there a contract originally made with the Government was involved, we submit that it does come within the reasoning upon which that

case was grounded. Parties must contract with respect to the law,[5] whether they are contracting with private persons or with the Government. When the Standifer contract was executed it was provided by statute that the Government might "cancel, or requisition any existing or future contract." This statutory provision became a part of the Standifer contract just as much as it became a part of the contract involved in the *Russell Motor Car Co.* case. We submit that the Court of Claims was correct in applying the rule of the *Russell Motor Car Co.* case to the Standifer contract and in refusing, on the authority of that case, to include any anticipated profits in the award of compensation for cancellation of that contract.

The petitioner's knowledge of the power of the Government did not depend upon any presumption that it knew the law; it was a knowledge in fact. On August 3, 1917, the Fleet Corporation, under authority delegated by the President, by general order requisitioned all ships under construction and certain materials, machinery, and equipment necessary for their completion in practically every shipyard in the United States. Of this the petitioner must have been aware. On September 21, 1917, the War Industries Board issued "Priorities Circular No. 1," providing in effect that all persons engaged

[5] "Parties must be understood as making their contracts with reference to existing laws." *Ogden* v. *Saunders*, 12 Wheat. 212, 297.

in the production of iron and steel and the manufacture of products thereof should procure priority certificates for the operation of their factories and plants.* The scope of this circular included the production and manufacture of steam turbines. The petitioner under this authority was granted on various occasions priority certificates for the manufacture and production of steam turbines and their parts. The petitioner must have been aware that these priority certificates could be cancelled at any time and that then any contracts which it had made would be frustrated. Because of the very nature of the petitioner's product, the potential control of its plant by the Government was apparent to it and all its agreements in fact as well as in theory were made subject to the power of the Government to modify and suspend all work for the common defense. Consequently, we submit that the decision of this Court in the *Russell Motor Car Company* case, where it was held that the contract there involved was by implication made subject to the provision that the Government might cancel it at any time, is directly applicable and controlling in the present case.

B. Anticipated profits were properly denied for the cancellation of the two contracts which were executed prior to June 15, 1917, but after March 4, 1917.

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*See "American Industry in the War," a report of the War Industries Board by its chairman, Bernard M. Baruch, pp. 325–326.

Two of the contracts for the cancellation of which the petitioner is seeking just compensation were entered into prior to June 15, 1917, but after March 4, 1917. These are the contract with the Turbine Equipment Company, which was entered into on March 15, 1917 (R. 81–82, 52), and the contract with Supple & Ballin, which was executed on May 18, 1917 (R. 81–82, 27). Although the Act of June 15, 1917, had not been enacted at the time these contracts were made, we submit that the principle of the *Russell Motor Car Co.* case, 261 U. S. 514, *supra,* is nevertheless applicable to them. The Act of June 15, 1917, by its terms applied to "existing or future" contracts, and it is plain that it authorized the requisition and cancellation of these two earlier contracts.

But it is not necessary to contend for a retroactive application of the provisions of the Act of June 15, 1917. For express provision authorizing the modification or cancellation of any contract relating to ships or war material was included in the Act of March 4, 1917 (*infra,* pp. 26–27), which was enacted prior to the execution of either of these two earlier contracts. Under this statute, the President was given power to modify or cancel any existing contract for the production of ships or war material and to requisition any factory and appropriate the output of any factory producing ships or war material. This authority was to extend for one year only, but it

was continued by the Act of June 15, 1917, for the duration of the war.

Since this statute was in effect at the time the two earlier contracts were executed, we submit that the rule in the *Russell Motor Car Co.* case applies to them as well as to the contract which was executed after June 15, 1917. The terms of the Act of March 4, 1917, must be read into these two earlier contracts.

It may be objected that the provisions of the Act of March 4, 1917, were to become effective only "in time of war or of national emergency arising prior to March 1, 1918, to be determined by the President by proclamation." One of the two earlier contracts was executed on May 18, 1917, more than a month after war was declared. At that date the provisions of the Act of March 4, 1917, were clearly operative. The first contract was executed on March 15, 1917. At that date a national emergency existed, as was expressly declared by the President's Proclamation of February 5, 1917, 39 Stat. 1814 (*infra*, pp. 29–30). The parties to the contract of March 15, as well as those who were parties to the contract of May 18, are bound by the provisions of the Act of March 4, 1917; its terms should be read into those contracts. The rule of the *Russell Motor Car Co.* case applies with full force to both contracts and requires the holding that anticipated profits are no part of just compensation for their cancellation.

No court has drawn any distinction between contracts executed before and those executed after June 15, 1917. As pointed out by the court below (R. 99), the contract involved in *Brooks-Scanlon Corp.* v. *United States,* 265 U. S. 106, was executed (March 28, 1916) prior to the passage of either of the statutes now involved, but no point was made of this fact by this Court in determining the compensation to which the claimant was entitled. The Court of Claims in two cases where the Government cancelled contracts executed with manufacturers after March 4, 1917, but prior to June 15, 1917, has applied the rule of the *Russell Motor Car Co.* case to exclude anticipated profits from the just compensation awarded. *Grays Harbor Motorship Corp.* v. *United States,* 45 F. (2d) 259, now before this Court on a petition for certiorari not raising this issue; *Nitro Powder Co.* v. *United States,* decided December 8, 1930, not yet reported.

IV

IN ANY EVENT THE PETITIONER IS NOT ENTITLED TO ANTICIPATED PROFITS FOR THE CANCELLATION OF ITS CONTRACTS, BUT ONLY TO THE VALUE OF THE CONTRACTS AT THE DATE OF THE CANCELLATION, AND THIS SUM THE COURT OF CLAIMS HAS ALLOWED

Under the provisions of the Act of June 15, 1917, the Government is obligated to make just compensation for any requisition or cancellation by the President under the authority given by that statute. We believe that in using this phrase, "just compensation," Congress intended only to have

claimants compensated for their expenses and outlay, and not to have them paid profits which would have been realized had performance been completed.

"Just compensation" as used in the statute is a technical phrase used with a particular meaning and has been construed by this Court to contemplate only payment for actual expenses. In *Russell Motor Car Co.* v. *United States*, 261 U. S. 514, 523, this Court said:

> In fixing just compensation the court must consider the value of the contract at the time of its cancellation, not what it would have produced by way of profits for the Car Company if it had been fully performed.

We submit that this definition of just compensation, as used in the statute, prevents the extension of the award to include anticipated profits. The effect of the Acts of March 4, 1917, and June 15, 1917, was to modify and limit the amount of the award that could be made for the cancellation of contracts which the Government entered into or succeeded to by requisition.

The court below, in computing compensation, correctly, as we contend, allowed the expenses incurred by the petitioner with interest from the date on which this amount should have been paid. After calculating the amount the Court of Claims determined the immediate loss caused by the cancellation. It found (R. 89):

> The value of the contracts involved in the case at the time of their cancellation and the

> loss sustained by the plaintiff by reason of their cancellation was $8,500.00, * * *.

We submit that the Court of Claims was correct in allowing to the petitioner the value of the contracts at the time they were cancelled, in lieu of anticipated profits. In *Brooks-Scanlon Corp.* v. *United States,* 265 U. S. 106, *supra,* the claimant contended that it should be allowed its anticipated profits, but this Court said (pp. 123–124):

> We think it not permissible so to calculate compensation. It is the sum which, considering all the circumstances—uncertainties of the war and the rest—probably could have been obtained for an assignment of the contract and claimant's rights thereunder; that is, the sum that would in all probability result from fair negotiations between an owner who is willing to sell and a purchaser who desires to buy.

In accordance with the rule thus announced the Court of Claims found the value of the contracts. This finding is one of fact which this Court will not disturb. Although the amount ($8,500) determined by the court below is small in comparison with the amount of the profits ($370,663.81) which would have been made had the performance under the contract been completed, this is no doubt due to the fact that no reasonable purchaser at the date of cancellation would have expected that performance would be completed and these possible profits realized. He would have known that the

Government would exercise its right to cancel. This is a factor which this Court in the *Brooks-Scanlon* case, *supra*, declared should be taken into account in determining the value of the contracts which were cancelled.

The petitioner, we believe, confuses just compensation for the requisition of property, the measure of damages for breach of contract, and just compensation for the cancellation of contracts. The three are distinct.

Just compensation for the requisition of property does not include such elements as the former owner's cost and expenses. The award is for the value of the property at the time of requisition and nothing more. *Monongahela Navigation Co.* v. *United States*, 148 U. S. 312. Were the petitioner to recover for any requisition of its property (which never took place in the instant case), it would not be entitled to its expenses and costs as awarded in the court below. In the leading case on this question (*Brooks-Scanlon Corp.* v. *United States*, 265 U. S. 106) this Court stated (p. 123):

> The contract rights of claimant taken are to be distinguished from its expenditures for the production of the ship. The value of property may be greater or less than its cost; and this is true of contract rights and other intangibles as well as of physical things. It is the property and not the cost of it that is protected by the Fifth Amendment.

And this Court also said (p. 122):

> As we hold that claimant's contract rights were expropriated, it is not necessary to consider what would be just compensation in case of mere cancelation of the contract.

If the Government were being sued for breach of contract, the damages would include the profits which would have been realized upon full performance. The cases cited by the petitioner (pages 18, 22–25 of Petitioner's Brief) in which anticipated profits were treated as allowable are all of this class and deal with liability for unlawful breach of contract. But here the Government's obligation is to pay just compensation for a lawful cancellation of a contract, not damages for its breach.

None of the cases cited by the petitioner are in conflict with the decision below. Those which allowed prospective profits were breach of contract cases. If the three types of cases outlined above are distinguished from one another, the apparent confusion in awards disappears. In the *Russell Motor Car Co.* case, *supra*, *Barrett Company* v. *United States*, 273 U. S. 227, and *College Point Boat Corp.* v. *United States*, 267 U. S. 12, this Court has already considered at length the correct rule for compensation for cancellation. This was applied by the court below.

CONCLUSION

We believe that the decision below is correct. It follows the most applicable decisions of this Court. There is no authority to the contrary. The judgment of the Court of Claims should be affirmed.

Respectfully submitted.

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Attorneys.

OCTOBER, 1931.

STATEMENT BY THE SOLICITOR GENERAL

The Solicitor General does not subscribe to the conclusions above stated except as to the just compensation to be awarded for the cancellation of the contract P. D. 1779 which was entered into between the Government and the petitioner after June 15, 1917. It is not thought that the doctrine of *Russell Motor Co.* v. *United States,* 261 U. S. 514, can be so far extended as to import into the contracts of private parties a right of cancellation to be exercised by the Government in case of requisition, or that the requisition of the contracts for public use and the subsequent cancellation deprive the contractor of its contractual right to recover the measure of damage which would have been recoverable upon breach by the original purchaser, unless the equivalent of such recovery be awarded as just compensation. These are the personal views of the Solicitor General. They do not accord with the considered judgment of the court below or with the views of counsel presented in the foregoing brief. The question is one of general importance which has not been determined in any other case and because of the constitutional rights involved should be determined by the judgment of this Court.

THOMAS D. THACHER,
Solicitor General.

APPENDIX A

STATUTES INVOLVED

The Act of March 4, 1917, c. 180, 39 Stat. 1168, 1193, provides in part:

* * * * *

(b) That in time of war, or of national emergency arising prior to March first, nineteen hundred and eighteen, to be determined by the President by proclamation, the President is hereby authorized and empowdered, in addition to all other existing provisions of law:

* * * * *

Second. Within the limit of the amounts appropriated therefor, to modify or cancel any existing contract for the building, production, or purchase of ships or war material; and if any contractor shall refuse or fail to comply with the contract as so modified the President may take immediate possession of any factory of such contractor, or any part thereof without taking possession of the entire factory, and may use the same at such times and in such manner as he may consider necessary or expedient.

Third. To require the owner or occupier of any factory in which ships or war material are built or produced to place at the disposal of the United States the whole or any part of the output of such factory, and, within the limit of the amounts appropriated therefor, to deliver such output or parts thereof in

such quantities and at such times as may be specified in the order at such reasonable price as shall be determined by the President.

* * * * *

(d) That whenever the United States shall cancel or modify any contract, make use of, assume, occupy, requisition, or take over any factory or part thereof, or any ships or war material, in accordance with the provisions of paragraph (b), it shall make just compensation therefor, to be determined by the President, and if the amount thereof so determined by the President is unsatisfactory to the person entitled to receive the same, such person shall be paid fifty per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as added to said fifty per centum shall make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

The Emergency Shipping Fund provisions of the Act of June 15, 1917, c. 29, 40 Stat. 182, 183, provide, in part:

The President is hereby authorized and empowered, within the limits of the amounts herein authorized—

* * * * * *

(b) To modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material.

* * * * * *

(e) To purchase, requisition, or take over the title to, or the possession of, for use or

operation by the United States any ship now constructed or in the process of construction or hereafter constructed, or any part thereof, or charter of such ship.

* * * * * *

Whenever the United States shall cancel, modify, suspend or requisition any contract, make use of, assume, occupy, requisition, acquire or take over any plant or part thereof, or any ship, charter, or material, in accordance with the provisions hereof, it shall make just compensation therefor, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

APPENDIX B

By the President of the United States of America

A PROCLAMATION

Whereas Congress did by "An Act To establish a United States Shipping Board for the purpose of encouraging, developing, and creating a naval auxiliary and naval reserve and a merchant marine to meet the requirements of the commerce of the United States with its Territories and possessions and with foreign countries; to regulate carriers by water engaged in the foreign and interstate commerce of the United States; and for other purposes," approved September 7, 1916, provide that "during any national emergency the existence of which is declared by proclamation of the President, no vessel registered or enrolled and licensed under the laws of the United States shall, without the approval of the board, be sold, leased, or chartered to any person not a citizen of the United States, or transferred to a foreign registry or flag";

And whereas many shipowners of the United States are permitting their ships to pass to alien registers and to foreign trades in which we do not participate, and from which they can not be bought back to serve the needs of our water-borne commerce without the permission of governments of foreign nations;

Now, therefore, I, Woodrow Wilson, President of the United States of America, acting under and by virtue of the authority conferred in me by said Act of Congress, do hereby declare and proclaim that I have found that there exists a national emergency arising from the insufficiency of maritime tonnage to carry the products of the farms, forests, mines, and manufacturing industries of the United States to their consumers abroad and within the United States, and I do hereby admonish all citizens of the United States and every person to abstain from every violation of the provisions of said Act of Congress, and I do hereby warn them that all violations of such provisions will be rigorously prosecuted, and I do hereby enjoin upon all officers of the United States, charged with the execution of the laws thereof, the utmost diligence in preventing violations of said Act, and this my proclamation issued thereunder, and in bringing to trial and punishment any offenders against the same.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 5th day of February in the year of our Lord one thousand nine hundred and seventeen and of the Independence of the United States of America the one hundred and forty-first.

[SEAL.] WOODROW WILSON.

By the President:

ROBERT LANSING,

Secretary of State.

APPENDIX C

THE FIGURES INVOLVED IN THE JUDGMENT OF THE COURT OF CLAIMS

1. Petitioner's expenditures and indirect expenses, and cash receipts up to date of cancellations, on account of—

	Cash received	Expenses	
Supple & Ballin contract	$15,000	$45,918.73	
Standifer contract	151,720	223,554.77	
Turbine Equipment Co., Luckenbach contract	68,559	73,008.16	
P. D. 1779	-------	9,029.00	
Total	235,279	351,510.66	
		235,279.00	
Balance at time of cancellations			116,231.66
2. Add compensatory allowance, on basis of 6% per annum from equated date of cancellations to the date of release of materials by the Government			5,914.42
			122,146.08
3. Deduct salvage value of materials leaving as of January 14, 1920			20,149.88
			101,996.20
4. Additional compensatory allowance on basis of 6% per annum: January 14, 1920, to August 17, 1920, the date of award by the Shipping Board			3,620.86
			105,617.06
5. Deduct 75% of award by the Shipping Board paid to petitioner leaving as of August 17, 1920			66,542.72
			39,074.34
6. Add (a) damages for inconvenience, interference with efficiency, shop congestion and idleness, disruption of shop schedules, etc., consequent upon the cancellations	$30,000		
(b) Allowance for cost of handling, rental value of storage space for materials, etc	15,000		45,000.00
Total (with interest from August 17, 1920)			84,074.34
7. Value of the contracts on date of cancellations (with interest from equated date, March 17, 1919)			8,500.00
Principal amount of the court's judgment			92,574.34
Interest to date of judgment			51,989.05
Total as of April 30, 1930, the date of the original judgment (R. 79)			144,563.39

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